

MOTION FILED

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IN THE
Supreme Court of the United States

October Term, 1978
No. 78-607

GENERAL TELEPHONE COMPANY OF CALIFORNIA,
Petitioner,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA, *et al.,*
Respondents.

**On Petition for a Writ of Certiorari to the Supreme Court
of the State of California.**

**Motion for Leave to File Amicus Curiae Brief and
Amicus Curiae Brief of Communications Workers
of America in Support of the Petition for Writ of
Certiorari.**

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**On Petition for a Writ of Certiorari to the Supreme Court
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**Motion of Communications Workers of America for
Leave to File Amicus Curiae Brief.**

Communications Workers of America, AFL-CIO ("CWA"), a National Labor Organization within the meaning of the National Labor Relations Act, respectfully moves this Court for leave to file the *amicus curiae* brief annexed hereto.

1. Standing and Interest.

CWA is the exclusive collective bargaining agent for 16,530 employees of the General Telephone Company of California.

2. Timing of This Application.

On or about October 10, 1978, CWA received a copy of the Petition for Writ of Certiorari filed herein by the petitioner and since that time has studied the arguments therein set forth.

3. Point to Be Argued.

CWA believes there is a necessity for additional argument on the following point.

THE COMMISSION'S DECISION WILL NEGATIVELY AFFECT EMPLOYMENT IN THE STATE OF CALIFORNIA.

4. Summary of Argument and Scope Thereof.

General mentions fleetingly the effect of the PUC decision upon its work force.

As *amicus curiae*, CWA would collect for the Court the evidence presented herein that the loss of eligibility and the payment of back taxes plus interest and rate refunds to customers would force General to lay off approximately 7,500 employees and to reduce its construction budget by more than 50%. Further, there was testimony concerning the "ripple effect" this would have on other California industries and the significant consequences to employment in the State.

As *amicus curiae*, CWA would urge through argument and precedent that the PUC could not foreclose advance ruling from the IRS in view of the economic impact of the decision.

As *amicus curiae*, CWA proposes that it could cover this subject matter in a brief not to exceed 30 pages in length.

For the reasons stated above and in the annexed brief, CWA requests leave to file its *amicus curiae* brief in support of the Petition for Writ of Certiorari.

Respectfully submitted,

TIMOTHY J. SARGENT,
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**Amicus Curiae Brief of Communications Workers of
America in Support of the Petition for Writ of
Certiorari.**

Introduction.

1. CWA is the exclusive collective bargaining representative for 16,530 employees of General Telephone Company of California ("General").

2. CWA, in behalf of those employees and in its own behalf, with leave of the Court, files this *amicus curiae* brief in support of the Petition for Writ of Review and in opposition to the 3 to 2 opinion in Decision No. 87838 rendered by the Public Utilities Commission of the State of California ("PUC" or "the Commission").

3. In summary of its position herein, CWA urges that the Commission erred in rendering a decision based merely upon its analysis of the federal tax laws when the Commission knew that an incorrect analysis would have far-reaching harmful consequences (a) in the quality of service to ratepayers and customers and (b) in its economic effect upon employment in the State of California.

CWA POSITION.

I

The Commission's Failure to Deal With or Make Findings Upon the Possible Loss of Tax Eligibility Renders Its Decision Arbitrary and Violative of Due Process.

(Throughout, CWA refers to "eligibility." Such reference means General's eligibility to claim accelerated depreciation and the investment tax credit for federal income tax purposes.)

CWA's position in this respect is set forth in complete detail in its *amicus curiae* brief in Case No. 78-606, *The Pacific Telephone and Telegraph Company v. The Public Utilities Commission of the State of California, et al.*

The underlying petition herein is from one decision which dealt with both General and Pacific (No. 87838). In the case of General, the sums of money involved are less: General was ordered to refund sixty-five million dollars and to reduce current rates by twelve million six hundred fifty-three thousand dollars. (Decision, p. 55.)

General did not, independently of Pacific, adduce testimony below as to the dire economic impact from

loss of eligibility. The Commission, however, noted (as if in passing) that the impact would be substantial, identifying the following elements individual to General or common to both:

- (a) tax liability of two hundred twenty three million dollars;
- (b) the need to raise additional funds for plant investment;
- (c) deterioration in financial position;
- (d) necessity for increased interest rates and return on debt and equity; and
- (e) foreseeable staggering rate increases. (Decision, p. 19.)

Accordingly, the position advanced by CWA in the Pacific case, applies with equal force in General's case. That position is not repeated verbatim herein.

II

The Inaction of the PUC Relative to the Possible Loss of Eligibility Is Inconsistent With the PUC's Alarm Over the Potential Loss of Eligibility.

The effect of the Commission's failure to take any action 'at all in avoidance of the foreseen economic chaos is logically applicable to the General case for all of the reasons set forth in CWA's Pacific brief and same will not be repeated here.

Respectfully submitted,

TIMOTHY J. SARGENT,
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